



H.C.P.No.1301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.1301 of 2023

Kalaiyarasi

.. Petitioner

VS

1.The State of Tamil Nadu

Rep. by Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.

2.The District Magistrate and District collector

Thiruvarur District
Thiruvarur

3. The Superintendent

Thiruvarur District
Thiruvarur

4. The Superintendent

Central Prison
Trichy

5. The Inspector of Police

Nannilam Police Station
Thiruvarur District

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order passed by the second respondent in Detention order COC No.30/2023 dated 29.03.2023 and to quash the same and direct the respondents to produce the body of person of the detenu Aravind, son of Annadurai, aged about 21 years, before this Court and set him at liberty, detenu now detained at Central Prison, Trichy.

For Petitioner : Mr.E.Aneesh Vinayak
for Mr.T.Navaneethakrishnan

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

This order will now dispose of the captioned 'Habeas Corpus Petition' (hereinafter 'HCP' for the sake of convenience and clarity).

2. Captioned HCP was listed for admission on 25.07.2023 and this Bench made the following order:

'H.C.P.NO.1301 OF 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.,)

Mr.S.Selvakumar, learned counsel representing the counsel on record for petitioner expresses his regret for not representing the matter in the previous listing.

2.Be that as it may, taking into account the fact that this is a case of preventive detention and considering the



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concerns of the petitioner and detenu, Admission Board order is made.

3.Captioned Habeas Corpus Petition has been filed in this Court on 06.07.2023 inter alia assailing a 'detention order dated 29.03.2023 bearing reference C.O.C.No.30/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fifth respondent is the Sponsoring Authority.

4.To be noted, mother of detenu is the petitioner.

5.Mr.S.Selvakumar, learned counsel representing the learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 394 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] in Crime No.79 of 2023 on the file of Nannilam Police Station.

6.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of



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convenience and clarity].

7.The impugned preventive detention order has been assailed inter alia on the ground that the family members of the detenu were not informed about the order of detention.

8.Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

9.Mr.E.Raj Thilak, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

3. The aforementioned Admission Board order dated 25.07.2023 captures all essentials i.e., facts that are imperative for appreciating this order and therefore, we are not setting out the same again in this final order. Suffice to say that aforementioned 25.07.2023 Admission Board order shall now be read as an integral part and parcel of this final order. This also means that the short forms, short references and abbreviations used in the Admission Board order dated 25.07.2023 will continue to be used in the instant final order also.

4. Mr.E.Aneesh Vinayak, learned counsel on record for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor, assisted by Mr.C. Aravind, learned counsel for all the respondents are before us.



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5. In the Admission Board, learned counsel for petitioner projected his argument on the ground that the family members of the detenu were not informed about the order of detention but in the final hearing today, learned counsel predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the detaining authority as regards imminent possibility of detenu being enlarged on bail is impaired. Elaborating on this submission, learned counsel drew our attention to a portion of paragraph 4 of the grounds of detention and the relevant portion reads as follows:

'4.... However in similar case in Crime Number 490/2022 u/s 341, 294(b), 397, 506(ii) IPC of Tiruthuraipoondi Police Station, bail was granted by the Court of Judicial Magistrate Court, Tiruthuraipoondi in Cr.M.P.No.09/2023 dated 02.01.2023 to an accused by name Thiru.Ruban @ Amirtharuban.

Hence, I infer that there is real possibility of (Thiru.Ramesh, Male, aged 27/2023, S/o.Ravichandran) coming out on bail by filing a bail application for the above case before the appropriate court and Higher Court....'



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6. Learned counsel submitted that aforementioned bail order in '*Ruban @ Amirtharuban*' (hereinafter '*Ruban's case*' bail order' for the sake of convenience) has been furnished to the detenu as part of the grounds booklet. Adverting to the aforementioned *Ruban's case* bail petition as well as bail order thereat i.e., *Ruban's case* bail order in the grounds booklet, learned counsel submitted that the aforementioned bail order dated 02.01.2023 made by learned Judicial Magistrate, Thiruthuraipoondi is a default bail under Section 167(2) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity] and therefore the aforementioned subjective satisfaction (qua imminent possibility of detenu being enlarged on bail) arrived at by the Detaining Authority is impaired.

7. Responding to the aforementioned argument, learned Prosecutor submitted that the alleged offence/alleged charge in both cases i.e., ground case and *Ruban's case* are broadly comparable.

8. We carefully considered the rival submissions and we find that the argument of learned counsel for petitioner deserves to be sustained as a default bail order under Section 167(2) Cr.P.C. is more of



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an arithmetic exercise i.e., numeric statutory expression and there is no real discretion for the Trial Court in granting bail unlike a regular bail under Section 437 Cr.P.C. or 439 Cr.P.C. Therefore, comparison of a default bail order under Section 167(2) Cr.P.C. with the ground case to arrive at aforementioned subjective satisfaction qua imminent possibility of detenu being enlarged on bail is clearly a flawed exercise. The sequitur is, impugned preventive detention order gets vitiated and the same is liable to be dislodged.

9. Ergo, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.03.2023 bearing reference COC No.30/2023 made by the second respondent is set aside and the detenu Thiru.Aravind, aged 21 years, son of Thiru.Annadurai, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
27.09.2023

Index : Yes

Neutral Citation : Yes

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Tiruchirappalli.



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To

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1. The Additional Chief Secretary to Government,
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Fort St. George, Chennai – 9.
2. The District Magistrate and District collector
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6. The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.,**

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